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THE GIG ECONOMY

THE BIG GIG

Given the rise and rise of the so-called gig economy, **Benjamin Gee** outlines the legal ramifications for employers

THE EMERGENCE of the gig economy is facilitated by the advent of business platforms that are able to simulate labour markets by matching users with vendors of goods and services. FCB Workplace Law is closely watching the spread and penetration of this gig economy in Australia, and its influence on the traditional employment model.

businesses, calls for a fundamental rethink of the basic wage unit in Australia.

A new way of engaging labour

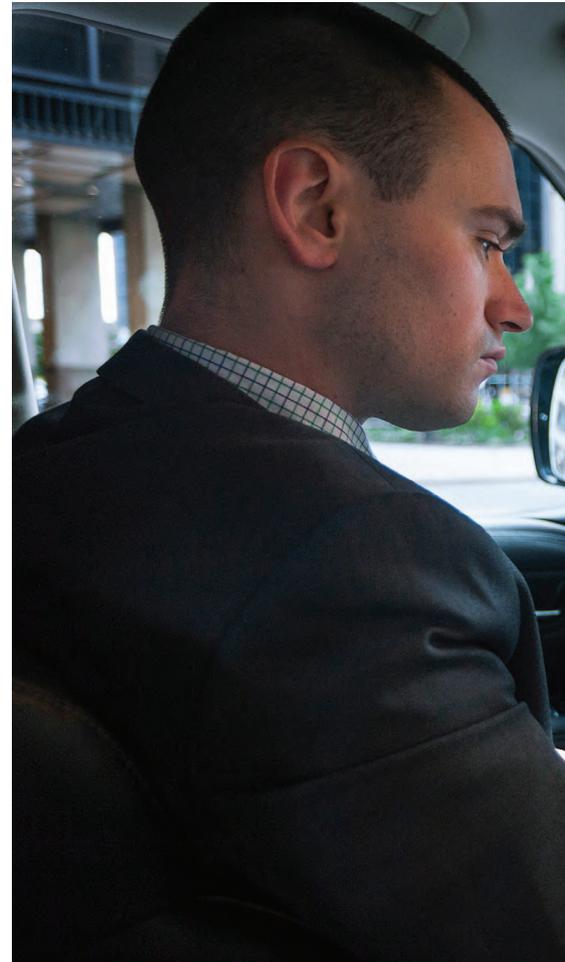
In a gig economy, the job vendor uses a platform to invite people to bid on specific tasks offered at a set price. The vendor selects the desired party to perform the task, then

The emergence of the gig economy in Australia poses some significant challenges for the Australian labour ecosystem

Since 1907, Australia has had a system for establishing minimum wages and work standards in the domestic labour market. Throughout the 20th century, the basic wage model evolved in Australia through awards, and more recently enterprise agreements. Awards and enterprise agreements are almost exclusively based on assigning value to an employee's time, with no reference to labour productivity, output or the value created by the work. The emergence of the gig economy as a viable source of work for Australians, and as a labour supply chain for

rates the quality of the work upon completion. The whole transaction occurs without any consideration of the award rates of pay, minimum employment standards and other conditions that would apply under an award or enterprise agreement. Depending on your viewpoint, the gig economy either subverts minimum work standards for all Australians, or ushers in an exciting new wave of innovation in the engagement of labour.

The advent of a labour market making platforms for all types of services, including professional, administration, payroll,



transportation, cleaning and short-term leasing of property or vehicles, means it is now fast, easy and convenient to micro-outsource a significant number of tasks and jobs. However, it appears workers in the gig economy are not yet reflected in labour market statistics.

Currently, over 51% of all employed Australians are covered by an award or enterprise agreement. Many location-based industries – transport and logistics, cleaning, hospitality – enjoy a natural captive labour market as they cannot be performed elsewhere. However, a number of award-based industries, including call centres, manufacturing and IT, can be outsourced to foreign workforces in



countries with little regard for domestic employment conditions.

We cannot avoid the fact that the Australian labour market is competing in a global marketplace, where work inputs can be fluidly distributed and sourced based on a complex web of factors, including skills, qualifications, customer preference and labour cost. Here lies the question of whether letting the market set the price of individual tasks or jobs is fair, and if so, what impact will this have on Australia's traditional labour market?

The emergence of the gig economy and the impact of the global labour market calls for major debate on both the ecosystem of the Australian labour market – the National

Employment Standards, awards and enterprise agreements – and the basic wage unit. Yet the Fair Work Commission, which is near to completing a four-yearly review of modern awards, has heard almost no evidence or critical examination of whether a wage system measuring units of time is still the best system for a 21st century economy.

Questions for the Australian market

Uber is perhaps the most widely known phenomena in the gig economy. On Friday 28 October 2016 the UK Employment Tribunal deemed a small group of Uber partner-drivers to be employed as “workers” by Uber. As a result, those partner-drivers were entitled to the UK minimum wage

and other minimum entitlements. Uber immediately announced they would appeal. While the comparable UK laws are broader than Australia's, particularly in relation to the concept of defining an ‘employee’, this ruling begs the question of how a similar claim would play out in Australia.

The emergence of the gig economy in Australia poses some significant challenges for the Australian labour ecosystem:

- Should the ecosystem embrace gig work and set minimum standards for workers who are not in a traditional employment model?
- If a business or app matches workers – eg programmers, lawyers or engineers – with end user clients, who is then legally responsible for the quality of the output?
- If a business owner books a cleaner via an app to come and clean the workplace and an item is broken, who is liable for replacing the item?
- If a business or app derives its income from matching a worker with a job vendor, then how should the relationship between the worker, the end user customer and the business/app be described?

While Uber and its peers are offering new pastures for work in Australia, the legal principles involved have not yet been applied to offer clear guidance on whether to regard such workers as employees or self-employed, and if so, on what terms.

For Australian employment law this is very much a ‘stay-tuned’ time. If your business is operating in the gig economy, you would benefit from taking advice on how well your business model is equipped to comply with Australian workplace legislation. **FRD**

Benjamin Gee, partner and solicitor at FCB Workplace Law, is also an accredited specialist of workplace law in Victoria. For questions relevant to the above article, please contact: bjg@fcgroup.com.au.

